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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/009,629	12/12/2001	Wilhelm Rademacher	50061	9694

26474 7590 12/14/2006

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EXAMINER

PRYOR, ALTON NATHANIEL

ART UNIT	PAPER NUMBER
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1616

DATE MAILED: 12/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/009,629	<b>Applicant(s)</b> RADEMACHER ET AL.	
	<b>Examiner</b> Alton N. Pryor	<b>Art Unit</b> 1616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☐ Responsive to communication(s) filed on 29 September 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☐ Claim(s) 1-4,6,7,9-12,14 and 15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) 1,2,4,6,7,10-12 and 15 is/are rejected.
- 7) ☐ Claim(s) 3,9,14 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

I. Rejection of claim 6 under 35 USC 102 as being anticipated by Cervelle in light of amendment filed 9/29/06 will be maintained for reason on record and reason as follows. Claims 7 and 15 are added to this rejection. Applicant argues that claim 6 is to an extract obtained from grapes rather than from *Lespedeza capitata*, which is out side of the grape family. Applicant argues that the flavonoids from the *Lespedeza capitata* differ from those obtained from grapes and that this difference rids Cervelle from reading on claim 6. Examiner disagrees with applicant because claim 6 is to an extract comprising flavonoids and other phenolic compounds rather than to a method of obtaining an extract. Cervelle's extract meets the limitations of the claimed extract. In a claim to a composition / product (extract) the components thereof are limitations, not steps as to how the extract is obtained. Note claims 7 and 15 have been added to this rejection. Claims 7 and 15, like claim 6, discloses in a claim drawn to a composition a statement as to how the product is prepared / obtained. In this case, the composition claim recites that the product is prepared with the plant. However, in a claim to a composition, information recited therein as to how the product was prepared (e.g. wherein plant has been treated with acylcyclohexanedione) adds no patentable weight to the composition. The composition of claims 7 and 15 only require a part or part of a plant such as an extract. Note, Cervelle teaches a plant extract and therefore meets the limitation of the claims.

II. New Rejections

***Claim Rejections - 35 USC § 112***

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The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 6,7 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 6 recites the limitation "the grapevine plant" in line 3. There is insufficient antecedent basis for this limitation in the claim.

Claim 7 recites the limitation "the plant" in line 3. There is insufficient antecedent basis for this limitation in the claim.

Claims 1,2,4,10-12 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for a method of increasing and qualitatively modifying the content of flavonoids and phenolics constituents in grapes using instant acylcyclohexanedione, does not reasonably provide enablement for a method of increasing and qualitatively modifying the content of flavonoids and phenolics constituents in other fruits / vegetables (cherries, plums, sloes, kale, carrots, etc.) claimed using instant acylcyclohexanedione. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the invention commensurate in scope with these claims. Working examples are to grapes. The chemistry between the flavonoids of fruits / vegetables and the acylcyclohexanedione compounds may differ and therefore may or may not increase and qualitatively modify the content of flavonoids and phenolics constituents of all vegetables and fruits claimed.

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***Telephonic Inquiry***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alton N. Pryor whose telephone number is 571-272-0621. The examiner can normally be reached on 8:00 a.m. - 4:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann Richter can be reached on 571-272-0646. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

A handwritten signature in black ink, appearing to read 'Alton N. Pryor', with a stylized, cursive script.

Alton Pryor  
Primary Examiner  
AU 1616